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Answer and Return of Writ

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

SAMUEL H. SHEPPARD, :

Petitioner :

vs. :

E. L. MAXWELL, Warden :
Ohio Penitentiary

Respondent :

CIVIL ACTION
No. 6640

ANSWER AND RETURN OF WRIT

In this answer and return of writ of habeas corpus paragraph and subparagraph numbers and letters are identical with the numbers and letters in the petition filed herein. For his answer and return of writ of habeas corpus, respondent says:

I. Respondent has petitioner in custody by virtue of commitment papers issued out of the Court of Common Pleas of Cuyahoga County, Ohio, pursuant to a judgment of conviction of second degree murder rendered by a jury in said court. The judgment of conviction was affirmed by the Court of Appeals of Cuyahoga County, Ohio, 100 O. App. 345 (1955). The judgment of conviction was affirmed by the Supreme Court of Ohio, 165 O.S. 293 (1956). Rehearing denied, July 5, 1956. Certiorari was denied by the Supreme Court of the United States, 352 U.S. 910; rehearing denied, 352 U.S. 955.

II. Further answering, Respondent says that the record in this case affirmatively shows that the petitioner was awarded a full and fair hearing in the state courts, resulting in reliable findings of fact, and that the state courts applied correct constitutional standards in disposing of the various claims of the petitioner.

III. Respondent admits that petitioner was put to trial on October 18, 1954 in the Court of Common Pleas of Cuyahoga County for the murder of his wife; admits that on December 21, 1954, the jury returned a verdict of guilty and that petitioner

(10.)

was sentenced to life imprisonment; admits that petitioner is presently incarcerated pursuant to said sentence and denies that petitioner is unlawfully restrained of his liberty.

IV. Further answering, Respondent admits that petitioner has exhausted all his remedies in the courts of Ohio and further says that the Ohio courts have not been biased or prejudiced, but have, on the contrary, granted petitioner a full, fair and impartial hearing throughout the course of said trial, review and appeals thereon.

V. Further answering, Respondent says that all of the transcripts, exhibits, documents and records arising from this trial are now in possession of the Clerk of this Court and are and have been available to counsel for petitioner at all times.

VI. A. Further answering, Respondent denies that petitioner was arraigned on July 30, 1954, denies that petitioner was arraigned without counsel, and denies that petitioner requested a delay in the arraignment.

B. Further answering, Respondent denies that petitioner was deprived of the right to confer with counsel while he was incarcerated in the county jail on Sunday, August 1, 1954.

VII. A, B, C, D, E, and F.

Furthering answering, Respondent says that petitioner's request for a change of venue and for a continuance were properly overruled, as shown by the record, as the atmosphere of a Roman Holiday and the coverage of the trial proceedings was caused by the case having caught the public imagination, and requests by the news media for space in the court room were met by the court by assigning space in the rear of the court room, back of the trial area; and denies the populace of Cuyahoga County was imbued by prejudicial and inflammatory statements by the news media to the extent that no fair or impartial jury could be impaneled from the citizens of Cuyahoga County. The reference by the Ohio Supreme Court to the words "Roman Holiday" merely describes the widespread

publicity furnished by the news media to the public at large and had no reference to the conduct of the trial itself, nor to the proceedings in the court room.

VII. G and H.

Further answering, Respondent denies that the publication of the venire from which petitioner's jury was to be drawn, brought about pressures from extra-judicial sources upon the jury impaneled in this case.

VIII. A. Further answering, Respondent denies that a request was made that the jury be confined during trial.

B. Further answering, Respondent denies that the trial judge failed to adequately caution and instruct the jurors during the course of the trial.

C. Further answering, Respondent denies that it was error for the trial court to refuse to interrogate the jury during the trial as to whether they had heard opinions, advice, rumors and alleged information arising from extra-judicial sources.

D. Further answering, Respondent denies that the trial judge, in making seating arrangements for the news media in the court room, exposed jurors to a prejudicial or inflammatory wave of publicity.

IX. A, 1 to 7, inclusive. Respondent, for answer to this paragraph in the petition, denies that the conditions and circumstances alleged herein, deprived petitioner of a fair and impartial trial, and avers that arrangements for the inquest by the Coroner were authorized by law, and the arrest of petitioner was made after a thorough investigation by the public officials.

B, 1 to 5, and C. Respondent denies that the conditions and circumstances alleged in Paragraph B, 1 to 5, and C, deprived the petitioner of a fair and impartial trial.

X. A. Respondent denies that the trial court prevented petitioner from exercising his last peremptory challenge during the impaneling of the jury.

B. Respondent denies that the petitioner was deprived of a fair and impartial trial as a result of the actions of the bailiffs in permitting the jurors to make telephone calls to their families, and denies that said bailiffs violated Section 2945.32 of the Revised Code of Ohio.

C. Respondent denies that the telephone calls made by the jurors violated Section 2945.33 of the Revised Code of Ohio.

XI. A. Respondent denies that the petitioner was prevented from entering his home and examining said premises after the murder was committed, and avers that there is no evidence in the record that any request to enter the house for the purpose of investigation and inspection was ever made by the petitioner, nor does the record show any formal application to the court at any time for a like purpose.

B. Respondent denies that the trial court erred in refusing to grant petitioner a new trial on the ground of newly discovered evidence; denies that the petitioner produced evidence after trial which was not available to him during the trial, and avers that the evidence produced by petitioner after trial was not newly discovered evidence.

XII. A. and B. Respondent denies that any relevant material or substantial evidence was suppressed by the prosecution, and denies that any unjust tactics were used by the prosecuting authorities in the trial of this case.

XIII. A. Respondent denies that the petitioner was prevented from having a fair and impartial trial by the testimony concerning his refusal to take a lie detector test, and avers that when the subject of the lie detector was first presented in the questioning of Officer Schottke and he related

the conversation he had had with the petitioner pertaining to the lie detector, no objection was made to the admission of those conversations (R. 3590). Respondent further avers that the petitioner himself, on direct examination, in response to questions asked by his counsel, related his conversations with Officers Schottke and Gareau pertaining to the lie detector test (R. 6298-6299). Respondent further avers that the trial court instructed the jury that a person is not compelled to take a lie detector test (R. 3852).

B. Respondent denies that the petitioner was prevented from having a fair and impartial trial by the action of the trial judge in permitting Mayor Houk, a witness in the case, to testify that he had taken a lie detector test, and avers that Houk's willingness to take the test was simply one item of fact to show both his attitude and conduct as Houk's name had been submitted to the police as a possible suspect.

XIV. A. 1, 2, 3 and 4. Further answering, Respondent denies that the Supreme Court of Ohio was an illegally constituted court when said court heard petitioner's appeal, and avers that it was at the instance of defense counsel, and without informing the prosecution of their intention, that the Chief Justice disqualified himself and appointed another judge. This is purely a state constitutional question under Article IV, Section 2 of the Ohio Constitution.

B and C. Further answering, Respondent is unable to determine as to just what petitioner is claiming as a federal constitutional violation by the Supreme Court of Ohio.

D. Further answering, Respondent says that all assignments of error presented to the Supreme Court of Ohio were considered and passed upon by said court, as shown by the decision of the Supreme Court in 165 O.S. 293, 301.

XV. A. Respondent says that petitioner's allegations in this paragraph are not clear.

XV. B. Respondent denies that the trial judge coerced the jury into reaching a verdict, and avers that the fact that the jury deliberated for a period of five days merely shows the carefulness and consideration which the jury gave the mass of testimony and over 200 exhibits in the case, and the written instruction given by the court to this jury which they had with them in their jury room.

Respondent denies each and every other allegation in the petition not herein admitted to be true. Affirmatively, respondent alleges that petitioner was convicted in a court which had jurisdiction of his person and of the crime involved, that petitioner was not deprived of any of his constitutional rights, and that the facts upon which petitioner relies, even if true, constitute mere error in the trial court which is not cognizable in an action of habeas corpus.

Copies of the indictment and certificate of sentence are hereto attached and made a part of this return.

For the foregoing reasons respondent prays that the petition herein be dismissed.

E. L. MAXWELL, Warden

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